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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/817,255

04/02/2004

Stephen W. Jacobs

17210

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42718

7590

04/13/2007

CNH AMERICA LLC

INTELLECTUAL PROPERTY LAW DEPARTMENT

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EXAMINER

GREENHUT, CHARLES N

ART UNIT

PAPER NUMBER

3652

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/13/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/817,255

Applicant(s)

JACOBS, STEPHEN W.

Examiner

Charles N. Greenhut

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-8 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

**I. Request for Continued Examination**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/5/07 has been entered.

**II. Claim Rejections - 35 USC § 112**

The following is a quotation from the relevant paragraphs of 35 U.S.C. 112:

(2) The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-3 and 5-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - 1.1. With respect to claim 1, multiple transitional phrases, i.e., "with" render the claim indefinite because it is unclear whether applicant is claiming the subcombination of the bale wagon, the subcombination of an improvement to the bale wagon or the combination of the bale wagon with the improvement. Furthermore, the body of the claim recites a step, "attaching the tines" which renders it unclear whether Applicant is intending to claim an apparatus or a method. Based on remarks, examiner assumes that the claims are directed to the improvement to a known bale wagon consisting of the adjustable tines.

- 1.1(a) If the parent claim is directed toward an improvement consisting of adjustable tines, references in child claims must agree with that recitation. E.g., reciting "The bale wagon of claim 1" would be improper.
- 1.2. Claim 2 improperly recites a step, i.e., "the tines are adjusted" in what is apparently an apparatus claim.
- 1.3. Claim 5 further elaborates on what is apparently an improper recitation of a step in an apparatus claim, i.e., "attachment...is accomplished..."

### **III. Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim(s) 1-3, 5 and 7 is/are rejected under 35 U.S.C. 102(b) as being anticipated by SEVEREID (US 5,333,693 A).
- 1.1. As best understood by examiner, with respect to claim 1-3, 5 and 7, SEVEREID discloses pivotally adjustable tines (36a)/(36b)/(36c), which may be adjusted by increments of about 1.5°-2°, dictating variable angles, an angle of about 90° formed between a vertical surface of the tines (e.g., rear Fig. 2A) and the load bed (Fig. 3), a crossbar (58), brackets (46a)/(46b) including multiple positions for each tine, a bolt (86a) and holes (86b).

### **IV. Claim Rejections - 35 USC § 103**

Art Unit: 3652

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim(s) 6 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over SEVEREID.

1.1. With respect to claim 6, applicant merely specifies selection of an optimum angle.

Selecting an optimum value is within the capabilities of one having ordinary skill in the art. It would have been obvious to one of ordinary skill in the art to modify SEVEREID with an angle selected from the group consisting of 89.5°, 87.5°, 86° and 84.5° in order to optimize the position of the tines.

2. Claim(s) 8 and 10 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over NULLE (US 5,168,817 A) in view of MACLAY (US 6,328,520 B1).

2.1. With respect to claims 8, and 10, NULLE demonstrates that it is well known to form stacks having outer objects lean against central objects in order to promote stability (Fig. 4). MACLAY demonstrates that it is well-known to form stacks of hay bales having various lean angles (cf. Fig. 13 & 16) selected by pivotally adjusting tines (127). It would have been obvious to one of ordinary skill in the art to stack bales leaning toward the center in order to promote stability of the stack.

#### **V. Response to Applicant's Arguments**

Applicant's arguments entered 2/5/07 have been fully considered but are not persuasive.

1. Applicant argues claims 1-3, and 5-7 are not anticipated or rendered obvious by SEVEREID because SEVEREID does not disclose the features of the bale wagon. This

argument is not persuasive. This argument is premised upon the assertion that the recitation "bale wagon comprising a load bed, a crossbar movable along the load bed, and tines attached to the movable crossbar" should be given patentable weight because the body of the claim relies upon the structure recited in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. While the claim remains unclear, Applicant has acknowledged in remarks (pg. 5) that the claim is directed toward merely the improvement consisting of the tine structure and not to the combination of that improvement with a known bale wagon. The structural limitations directed toward the bale wagon, including the load bed, and movable crossbar are, therefore, not required to meet the limitations of the claim because they are admittedly known from the prior art.

2. Applicant argues claims 1-3, and 5-7 are not anticipated or rendered obvious by SEVEREID because there is no motivation to combine the teachings of SEVEREID with a known bale wagon. This argument is not persuasive. Firstly, as discussed above, as the claim is best understood by Examiner and given its broadest reasonable interpretation, does not require any of the limitations of the bale wagon nor the combination of the improved tines with the bale wagon. Secondly, even if such limitations were required to be shown in the prior art, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found

either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. In this case, it is generally known in the art that it is desirable to stack bales using a lean-in method in order to promote stability of the stack. It would have been obvious to one having ordinary skill in the art to employ adjustable tines of SEVEREID to the known bale wagon in order to achieve this type of stacking.

3. Applicant argues that claim 8 is not rendered obvious by NULLE in view of MACLAY because MACLAY fails to teach a tilt angle selected by pivotally adjusting the tines. This argument is not persuasive. Applicant acknowledges that the tilt angle is controlled by beam (106). The tines (127) are pivotally adjusted with beam (106) (Cf. Fig. 13 & 16). The tilt angle is therefore selected by pivotally adjusting the tines, within the broadest reasonable interpretation of that phrase. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

## **VI. Conclusion**

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 7:30am - 4:00pm EST.
2. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey can be reached at (571) 272-6916. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.
3. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

Art Unit: 3652

information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CG

A stylized, handwritten signature in black ink, likely belonging to Patrick Mackey, positioned above his printed name and title.

PATRICK MACKEY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600